

ESTTA Tracking number: **ESTTA462616**

Filing date: **03/19/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91201504
Party	Defendant VIKING RIVER CRUISES (BERMUDA) LTD.
Correspondence Address	BETH M GOLDMAN ORRICK HERRINGTON & SUTCLIFFE LLP 2050 MAIN STREET, SUITE 1100 IRVINE, CA 92614-8255 UNITED STATES ipprosecutionsf@orrick.com
Submission	Opposition/Response to Motion
Filer's Name	Betsy Wang Lee
Filer's e-mail	ipprosecutionsf@orrick.com, blee@orrick.com
Signature	/Betsy Wang Lee/
Date	03/19/2012
Attachments	91201504_OTMTE.pdf (4 pages)(93436 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Viking Range Corporation, Opposer, v. Viking River Cruises (Bermuda) Ltd., Applicant.	Opposition No.: 91201504 APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR EXTENSION OF TIME TO SERVE DISCOVERY RESPONSES
---	--

Opposer Viking Range Corporation ("Opposer") has filed a Motion for Extension of Time to Serve Discovery Responses in Opposition Nos. 91201482, 91201495, 91201501, 91201502, 91201504, 91201506, and 91201512 (collectively, the "Oppositions"). Applicant Viking River Cruises (Bermuda) Ltd. ("Applicant") hereby opposes the Motion for Extension of Time to Serve Discovery Responses ("Motion") for the reasons set forth below.

Applicant has already prepared and served Applicant's First Set of Interrogatories, Requests for Admission, and Document Requests on Opposer on February 13, 2012, and Opposer's responses to Applicant's discovery requests are currently due today, **March 19, 2012**. Opposer's eleventh hour Motion is nothing more than a last ditch attempt to avoid the work of responding to six sets of discovery after Opposer itself filed seven separate proceedings against each of Applicant's pending applications. Applicant respectfully requests that the Board refuse to grant Opposer's Motion and to rule that Opposer has forfeited its right to object to the discovery requests on their merits by failing to respond to the discovery requests before the deadline. Opposer was not entitled to presume that its request for an extension of time would be granted. TBMP § 509.02; *see Chesebrough-Pond's Inc. v. Faberge, Inc.*, 205 U.S.P.Q. 888, 891 (C.C.P.A. 1980) (stating that an attorney has no right to assume that extensions of time will

always be granted). Therefore, Opposer should have served basic responses preserving its objections to the discovery requests.

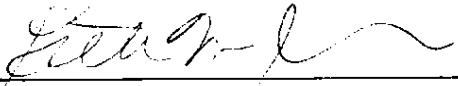
As grounds for its request for a thirty (30) day extension of time to respond to Applicant's discovery requests, Opposer states that "there is an outstanding settlement proposal that the parties are considering." Applicant responds that at this time, there is no longer an outstanding settlement proposal. Applicant's counsel has informed Opposer's counsel that Opposer's latest settlement proposals are unacceptable to Applicant.

Furthermore, pursuant to TBMP § 509.01(a), the mere existence of settlement negotiations or proposals does not excuse the parties from pursuing discovery. *See Fairline Boats PLC v. New Howmar Boats Corp.*, 59 U.S.P.Q.2d 1479, 1480 (T.T.A.B. 2000) (stating that "the mere existence of [settlement] negotiations, or proposals, without more, would not justify petitioner's delay in proceeding with testimony"); *Instruments SA Inc. v. ASI Instruments, Inc.*, 53 U.S.P.Q.2d 1925, 1927 (T.T.A.B. 1999) (denying opposer's motion to extend the close of the discovery period where plaintiff's claim of ongoing bilateral settlement negotiations was rebutted by defendant). As none of the Oppositions have been suspended, Opposer has an obligation to respond to Applicant's discovery requests by today, March 19, 2012.

Finally, Applicant maintains that Opposer's filing of this Motion is yet another attempt to reduce its own efforts in responding to Applicant's discovery after unnecessarily filing seven separate oppositions against each of Applicant's marks. Applicant has already been forced to file seven separate Answers and propound discovery in six different proceedings at its own time and expense due to the proliferation of oppositions filed by Opposer. In light of the foregoing reasons, Applicant respectfully requests that Opposer's request for a thirty (30) day extension to serve its discovery responses be denied and that the Board rule that Opposer has forfeited its right to object to the discovery requests on their merits by failing to respond to the discovery requests before the deadline.

Dated: March 19, 2012

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: 

Beth M. Goldman
Chelseaa E.L. Bush
Betsy Wang Lee

Attorneys for Applicant
405 Howard Street
San Francisco, CA 94105
(415) 773-5700

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR EXTENSION OF TIME TO SERVE DISCOVERY RESPONSES** is being served upon counsel for Opposer by First Class Mail on this 19 th day of March 2012, by placing the same in an envelope addressed as follows:

Sarah Anne Keefe
Marcy L. Sperry
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
271 17th Street, NW
Suite 2400
Atlanta, Georgia 30363-1017

By: Betsy Wang Lee
Betsy Wang Lee

OHSUSA:750134592.1